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23 June 1958

MEMORANDUM FOR: Chief, Projects and Procedures Staff

SUBJECT :

FOIAB5

1. We have received your memorandum of 26 May referring to this Office a question by the Audit Staff concerning leave en route in connection with home leave. The original enquiry stated in part:

"Regulations require that personnel proceeding to ZI on home leave and returning to their overseas post must have a minimum of 23 days accrued annual leave in order to be eligible for reimbursement of home leave travel costs. The case in question concerns a staff employee who wishes to spend three calendar weeks (15 days) in ZI and approximately two weeks in Europe on her return trip en route to the Station. Specifically, is it necessary for a home leave traveler to spend the entire 23 days, required by regulations, in ZI or may part of the required days be used as leave en route?"

25X1A 2. We find no reference in the regulations to a 23-day period.

FOIAB5 "The employee must have to his credit, at the time his travel begins, sufficient accrued and/accumulated annual leave to carry him in a pay status while in our country for at least a 30-day period."

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3. This proviso did not appear in the Act as originally submitted. In commenting on the original submission the Comptroller General advised the Bureau of the Budget:

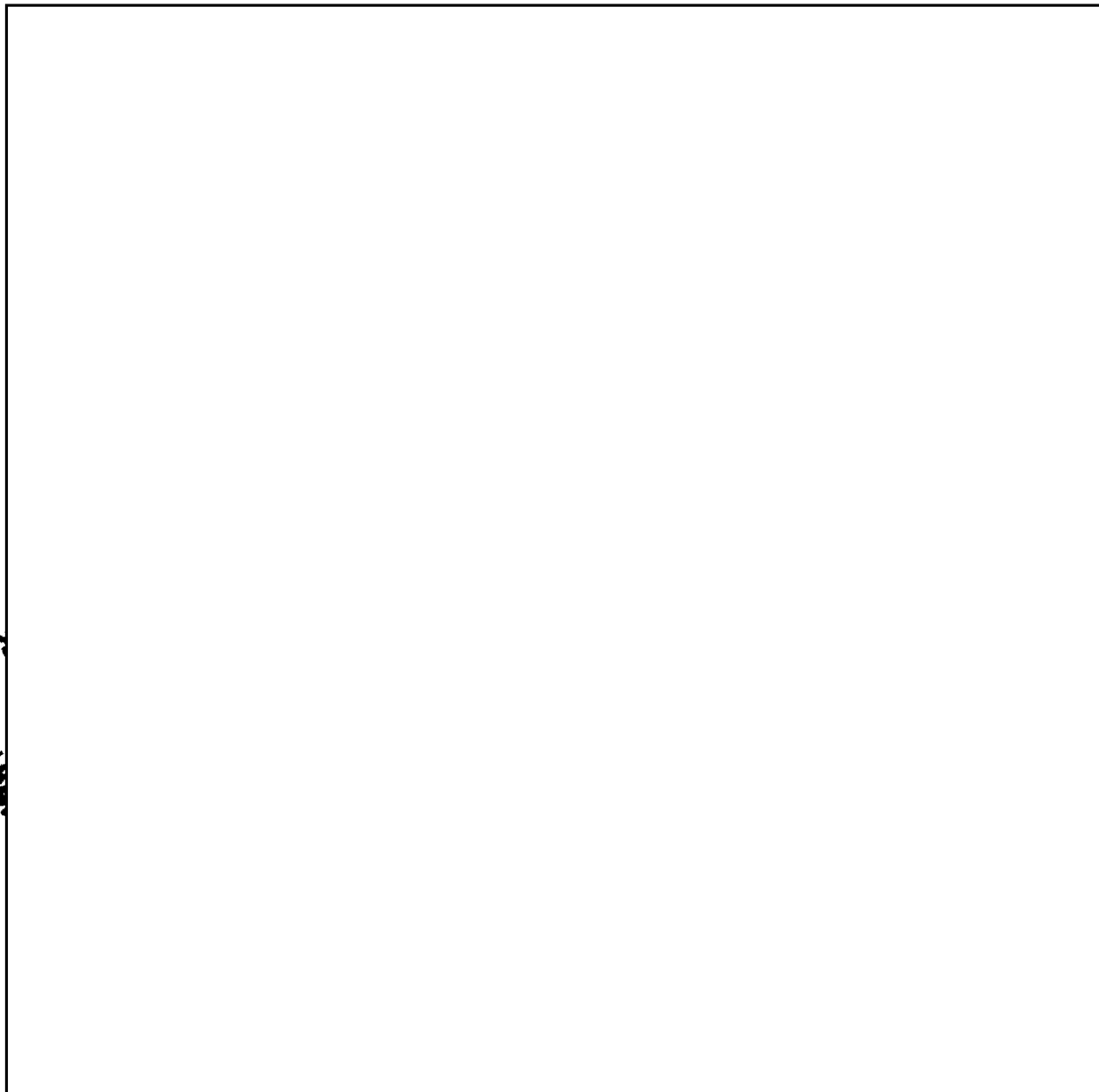
FOIAB5 "Unlike Foreign Service Officers, no statutory provisions as to leave other than those applicable generally to ODYCKE employees . . . have been enacted as to officers or employees of the organization, and in order to avoid unnecessary expense in returning to our country, employees who may be totally without accrued leave or whose stay here would be so brief as not to warrant the expense involved, it might be well to change the provision in question."

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6. We now turn to the particular question of leave en route. We cannot say as a matter of law that an employee with sufficient leave to carry him in a pay status for precisely 30 days must spend X number of them in our country and therefore be limited to Y number of days leave en route. We say that the purpose of the order must be the purpose authorized by the statute: Home leave. Whether leave en route home would evidence an abuse of the authority granted by the Act would depend upon the facts of each case. Determination of this would ordinarily be

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an administrative function. Thus, an employee may spend 15 days en route and 15 days home, and the organization, as a matter of policy, might approve; we would voice no legal objection to such a policy. But obviously 29 days en route and one day home would be the kind of unlawful abuse to which we have referred. The legal standard we apply here is that the period of time spent in out country must, in the light of all the facts, be reasonable and substantial.

7. This question will undoubtedly recur from time to time and therefore we recommend that you draw it to the attention of the appropriate policy making officials. A regulatory provision on this subject would seem desirable. We should be happy to assist in the preparation of such an issuance or in the formulation of the policy to be expressed in it.

Office of General Counsel